

TITLE 10. CALIFORNIA DEPARTMENT OF CORPORATIONS

NOTICE IS HEREBY GIVEN

The Commissioner of Corporations ("Commissioner") proposes to amend Sections 260.102.19, 260.140.41, 260.140.42, 260.140.45, and 260.140.46 of the California Code of Regulations (10 C.C.R. §§ 260.102.19, 260.140.41, 260.140.42, 260.140.45, and 260.140.46) under the CORPORATE SECURITIES LAW OF 1968 relating to the exemption from qualification for certain securities offerings through compensatory benefit option and purchase plans.

PUBLIC COMMENTS

No public hearing is scheduled. Any interested person or his or her duly authorized representative may request, in writing, a public hearing pursuant to Section 11346.8(a) of the Government Code. The request for hearing must be received by the Department of Corporations' ("Department") contact person designated below no later than 15 days prior to the close of the written comment period.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Department of Corporations, addressed to Kathy Womack, Office of Law and Legislation, Department of Corporations, 1515 K Street, Suite 200, Sacramento, CA 95814-4052, no later than 5:00 p.m., July 23, 2001. Written comments may also be sent to Kathy Womack (1) via electronic mail at regulations@corp.ca.gov or (2) via fax (916) 322-5875.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Under the Corporate Securities Law of 1968 ("CSL"), the Commissioner regulates the offer and sale of securities in California. Among other things, the Commissioner is charged with ensuring that the proposed plan of business of the issuer of securities and the proposed issuance or sale of securities is fair, just and equitable. The Commissioner has adopted regulations setting forth fairness standards for options granted to, and securities sold to, employees, directors, and consultants of the issuer of the securities (hereinafter the granting of options or selling of securities to employees, directors or consultants shall be referred to as "compensatory benefit plans").

In addition to the regulations setting forth fairness standards for compensatory benefit plans, certain compensatory benefit plans are statutorily exempt from the requirement that the offer or sale of the securities be qualified under the provisions of the CSL. The offer or sale of securities issued pursuant to a compensatory benefit plan are exempt from qualification if the offering is exempt from registration under Rule 701 of the federal Securities Act of 1933 (17 C.F.R. § 230.701), and the terms of the compensatory benefit plan comply with the fairness standards for compensatory benefit plans that are set forth in the regulations.

SB 1837 (Chap. 705, Stats. 2000) amended the statutory exemption for certain compensatory benefit plans to provide that such offerings of limited liability companies are exempt from the qualification requirements of the CSL if the offering is exempt under federal Rule 701 and complies with the existing regulations that set forth the fairness standards for such plans. However, the existing regulations describe fairness standards for offerings of shares of stock, thereby creating confusion as to the standards necessary for offerings of interests in limited liability companies to be exempt from qualification.

Accordingly, the Commissioner proposes to amend Sections 260.140.41, 260.140.42, 260.140.45, and 260.140.46 of Title 10, Chapter 3 of the California Code of Regulations to clarify that the existing standards for securities offerings under compensatory benefit plans apply equally to all types of securities issued under such plans, not just shares of stock issued by corporations.

The Commissioner further proposes to amend the procedure for filing the required notice of a transaction issuing securities under a compensatory benefit plan (10 C.C.R. § 260.102.19). The existing rule requires a notice to be filed within 30 days after the initial issuance of a security. In accordance with the changes made by SB 1837, the Commissioner proposes amending the language to require the notice to be filed not later than 30 days after the initial issuance of a security. Further, the Commissioner proposes amendments to clarify that the notice filing requirement is not triggered until securities are issued in California.

The Commissioner is also amending the provisions of the rules related to the transferability of options or rights to purchase securities under compensatory benefit plans to allow the securities to be transferred to the same extent as is permitted under federal Rule 701. Finally, the Commissioner is making additional clarifying changes to the rules on securities offered pursuant to a compensatory benefit plan.

AUTHORITY

Sections 25204 and 25610, Corporations Code.

REFERENCE

Section 25102(o), Corporations Code.

AVAILABILITY OF MODIFIED TEXT

The text of any modified regulation, unless the modification is only non-substantial or solely grammatical in nature, will be made available to the public at least 15 days prior to the date the Department adopts the regulations. A request for a copy of any modified regulations should be addressed to the contact person designated below. The Commissioner will accept written comments on the modified regulations for 15 days after the date on which they are made available. The Commissioner may thereafter adopt, amend or repeal the foregoing proposal substantially as set forth above without further notice.

AVAILABILITY OF INITIAL STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS/INTERNET ACCESS

The express terms of the proposed action may be obtained upon request from any office of the Department. Request Document OP 16/00-B. An initial statement of reasons for the proposed action containing all the information upon which the proposal is based is available from the contact person designated below. Request Document OP 16/00-C. These documents are also available at the Department's website www.corp.ca.gov. As required by the Administrative Procedure Act, the Office of Law and Legislation maintains the rulemaking file. The rulemaking file is available for public inspection at the Department of Corporations, Office of Law and Legislation, 1515 K Street, Suite 200, Sacramento, California.

AVAILABILITY OF THE FINAL STATEMENT OF REASON

Upon its completion, the Final Statement of Reasons will be available and copies may be

requested from the contact person named in this notice or may be accessed on the website listed above.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code Section 11346.5, subdivision (a)(13), the Department must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

FISCAL IMPACT

- Cost or Savings to any State Agency: None.
- Direct or Indirect Costs or Savings in Federal Funding to the State: None.
- Does not impose a mandate on local agencies or school districts, or a mandate which requires reimbursement pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code.
- Other nondiscretionary cost or savings imposed on local agencies: None

DETERMINATIONS

The Commissioner has made an initial determination that the proposed regulatory action:

- Does not have an effect on housing costs.
- Does not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.
- Does not significantly affect (1) the creation or elimination of jobs within the State of California; (2) the creation of new businesses or the elimination of existing businesses within the State of California; (3) the expansion of businesses currently doing business within the State of California.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSON OR BUSINESS

The Department of Corporations is not aware of any cost impacts that a representative person or business would necessarily incur in reasonable compliance with the proposed action.

EFFECT ON SMALL BUSINESS

The proposed regulatory action may affect small business.

CONTACT PERSON

Nonsubstantive inquiries concerning this action, such as requests for copies of the text of the proposed regulations may be directed to Kathy Womack at (916) 322-3553. The backup contact person is Karen Fong at (916) 322-3553. Inquiries regarding the substance of the proposed regulation may be directed to Colleen E. Monahan, Corporations Counsel, Department of Corporations, 1515 K Street, Suite 200, Sacramento, California 95814. (916) 323-7384.

Dated: May 29, 2001
Sacramento, California

TIMOTHY L. Le BAS
Acting Assistant Commissioner